IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.123 OF 2005

Shri Prashant J. Bhat ...Applicant.

V/s

Shri Gordhandas A. Dusija
and anr. ...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.5158 OF 2004

Shri J.S. Bhat ...Applicant.

V/s

Shri Atik M. Sanghavi ...Respondent.

ALONG WITH
CRIMINAL APPLICATION NO.124 OF 2005

Mr. J.S. Bhat & Ors. ...Applicants.

V/s

Shri Gordhandas A. Dusija
and anr. ...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.337 OF 2004

Shri J.S. Bhat & Ors. ...Applicant.

V/s

State of Maharashtra
and anr. ...Respondents.

Mr. B.P. Jakhade for the Applicants.

Ms. Neeta Solanki i/b M/s. Bharat Vaishnawa & Co for
respondent No.1.

CORAM: V.M.KANADE,J.

DATE: 21st April, 2005

P.C.:

1. Heard the learned counsel for the applicants and the learned Counsel for the contesting respondent.

2. Applicants are challenging the order of issuance of process passed by the Metropolitan Magistrate on a complaint filed by the respondent - complainant under section 138 of the Negotiable Instruments Act.

3. The learned Counsel appearing on behalf of the applicants submits that the Bank Accounts of the applicants were frozen pursuant to the order passed by the Income-tax Authorities and, as a result, the cheques which were deposited by the respondent - complainant were not honoured by the Bank. The learned Counsel appearing on behalf of the applicants has taken me through the panchanama dated 14/9/1998 in support of the said submission.

4. The learned Counsel appearing on behalf of respondent - complainant, on the other hand, submitted that the cheques in question were issued after the date of seizure of the accounts by the Income-tax Department and, therefore, even though the applicants knew that the accounts were frozen yet, they had chosen to issue the said cheques and, therefore, the

provisions of section 138 of the Negotiable Instruments Act were clearly applicable to the applicants.

5. I have perused the date of the cheques and also the date on which the cheques were dishonoured. It is abundantly clear that the said cheques have been issued after the accounts were frozen by the Income-tax Department. In my view, in this view of the matter, there is no merit in the submissions made by the learned counsel appearing on behalf of the applicants. However, in my view, all these questions are kept open so that the trial court can consider these aspects after the evidence is led by both parties during the course of the trial and, thereafter, shall decide these issues on merits and in accordance with law.

6. Accordingly all the above Criminal Applications are dismissed. Ad-interim orders stand vacated. Hearing of the trial is expedited.

V.M. KANADE, J.